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8 *Attorneys for Plaintiff Vincent Zinni*

9 UNITED STATES DISTRICT COURT

10 CENTRAL DISTRICT OF CALIFORNIA

11 VINCENT ZINNI, on behalf of  
12 himself and those similarly  
13 situated,

14 Plaintiff,

15 v.

16 CLICKSOFTWARE  
17 TECHNOLOGIES LTD.  
18 ISRAEL BOROVICH, MOSHE  
19 BENBASSAT, SHAI BEILIS,  
20 NIRA DROR, SHLOMO NASS,  
21 MENAHEM SHALGI, GIL  
22 WEISER, FRANCISCO  
23 PARTNERS, LP, OPTIMIZER  
24 TOPCO S.A.R.L, OPTIMIZER  
25 MERGER HOLDINGS LTD.

26 Defendants,

Case No.: 8:15-cv-00863-JLS-JCG

**FIRST AMENDED DERIVATIVE  
AND CLASS ACTION COMPLAINT**

**JURY DEMAND**

27 Plaintiff Vincent Zinni ("Plaintiff"), on behalf of ClickSoftware (defined  
28 below) and himself and all others similarly situated, by his attorneys, makes the  
following allegations based upon information and belief, except as to allegations

**FIRST AMENDED DERIVATIVE AND CLASS ACTION COMPLAINT**

1 specifically pertaining to himself and his counsel, which are based on personal  
2 knowledge.

### 3 **NATURE OF THE ACTION**

4 1. Plaintiff, by undersigned counsel, brings the following class action and  
5 derivative complaint individually and on behalf of all the public shareholders of  
6 ClickSoftware Technologies Ltd. (“ClickSoftware” or the “Company”) against the  
7 Company’s Board of Directors (the “Board” or the “Individual Defendants”) seeking  
8 equitable relief for their violations of Rule 14(a) promulgated under the Securities  
9 Exchange Act of 1934 (“Rule 14(a)”), and for their breaches of fiduciary duty arising  
10 out of the attempt to sell the Company to Optimizer TopCo S.a.r.l (“Optimizer”) and  
11 Optimizer Merger Holdings Ltd. (the “Merger Sub”) in a transaction valued at  
12 approximately \$438 million, as detailed herein (the “Proposed Transaction” or  
13 “Merger”).

14 2. The terms of the Proposed Transaction are set forth in a 6-K filing by  
15 the Company with the SEC on April 30, 2015, wherein defendant ClickSoftware  
16 acknowledges that a definitive Agreement and Plan of Merger (the “Merger  
17 Agreement”) was approved by and between the Company and Francisco Partners  
18 Management L.P. (“Francisco Partners”), a private equity firm which owns  
19 Optimizer and Merger Sub (collectively “Optimizer”). The Merger Agreement  
20 contemplates that Optimizer will acquire all of the outstanding shares of common  
21 stock of the Company in exchange for \$12.65 per share in cash.

22 3. The Proposed Transaction is a “going private” action. Optimizer and  
23 Merger Sub are legal entities created for the sole purpose of effectuating the Merger;  
24 orchestrated primarily by Francisco Partners, for the purpose of ridding the  
25 Company of its public shareholders.

1           4. In approving the Proposed Transaction, the Individual Defendants  
2 (defined below) have breached their fiduciary duties of loyalty, good faith and due  
3 care to ClickSoftware and its public shareholders by, *inter alia*, (i) agreeing to sell  
4 ClickSoftware through a flawed sales process and for inadequate consideration; and  
5 (ii) engineering the Proposed Transaction to benefit themselves and/or Francisco  
6 Partners and Optimizer without regard to the Company or its shareholders.  
7 Moreover, as alleged further herein, Francisco Partners and Optimizer aided and  
8 abetted the Individual Defendants' breaches of fiduciary duty.

9           5. Defendants further breached their fiduciary duties to ClickSoftware and  
10 its shareholders on May 7, 2015, when the Company filed its Proxy Statement on  
11 Form 6-K with the SEC ("Proxy"), setting the Vote date for June 11, 2015 and  
12 recommending that ClickSoftware shareholders vote in favor of the Merger.  
13 However, as described herein, the Proxy fails to disclose material information  
14 necessary for a reasonable shareholder to make an informed decision on whether to  
15 approve the Proposed Transaction, in breach of the Individual Defendants' duty of  
16 care. ClickSoftware cannot be exempted from federal laws because its Chief  
17 Financial Officer signed the Proxy pursuant to Exchange Act laws. Further,  
18 ClickSoftware bears the burden to prove they are exempt from complying with  
19 Exchange Act laws and cannot do so here.

20           6. For these reasons and as set forth in detail herein, both the value to  
21 ClickSoftware shareholders contemplated in the Proposed Transaction and the  
22 process by which Defendants seek to consummate the Proposed Transaction are  
23 fundamentally unfair to Plaintiff and the other public shareholders of the Company  
24 and in violation of both United States federal and Israeli laws.

25           7. Accordingly, Plaintiff seeks to enjoin Defendants from taking any steps  
26 to consummate the Proposed Transaction or, in the event the Proposed Transaction  
27

1 is consummated, to recover damages resulting from the Individual Defendants'  
2 violations of their fiduciary duties, aided and abetted by Francisco Partners,  
3 Optimizer, and Merger Sub.

#### 4 **JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331  
6 (federal question jurisdiction), as this Complaint alleges violations of Rule 14(a).  
7 This Court has jurisdiction over the state law claims pursuant to 28 U.S.C. §1367.  
8 Additionally, Defendants removed this action on June 2, 2015 pursuant to 28 U.S.C.  
9 §§1332, 1441 and 1446.

10 9. Venue is proper in this Court because the Defendants reside, are found,  
11 have agents and regularly transact business in this District as provided in 28 U.S.C.  
12 § 1391(b) and (c).

#### 13 **THE PARTIES**

14 10. Plaintiff, Vincent Zinni ("Plaintiff"), is a holder of ClickSoftware  
15 common stock and has been the owner of shares during all relevant times hereto.  
16 Plaintiff Zinni is a citizen of the state of California.

17 11. Defendant ClickSoftware is a corporation incorporated under the laws  
18 of the State of Israel with principal executive offices located at Azorim Park, Oren  
19 Building, 94 Em Hamoshavot Road, Petach Tikva, 4970602, Israel. ClickSoftware  
20 is a business software, field service management and workforce management  
21 company. It offers automated mobile workforce management and service  
22 optimization solutions for enterprise and small business, both for mobile and in-  
23 house resources. ClickSoftware was founded in 1979 and the Company's common  
24 stock is traded on the NASDAQ under the symbol "CKSW."

25 12. Defendant Francisco Partners, is a privately held Limited Partnership  
26 organized under the laws of California with principal executive offices located at  
27

1 One Letterman Drive, Building C, Suite 410, San Francisco, CA 94129. Francisco  
2 Partners is a private equity firm focused exclusively on investments in technology  
3 and technology-enabled services businesses. Since its inception in 1999, Francisco  
4 Partners has raised approximately \$10 billion in committed capital across four funds  
5 and has built an investment portfolio including over 60 companies.

6 13. Defendant Optimizer is a corporation organized under the laws of  
7 Luxembourg with principal executive offices located at One Letterman Drive,  
8 Building C, Suite 410, San Francisco, CA 94129. Optimizer is a holding company  
9 created by Francisco Partners for the sole purpose of allowing ClickSoftware to go  
10 private through the consummation of the Proposed Transaction.

11 14. Defendant Merger Sub, is a company organized under the laws of the  
12 State of Israel with its headquarters at One Letterman Drive, Building C, Suite 410,  
13 San Francisco, CA 94129. Merger Sub was created by Francisco Partners for the  
14 sole purpose of allowing ClickSoftware to go private through the consummation of  
15 the Proposed Transaction.

16 15. Defendant Israel Borovich (“Borovich”) has been the Chairman of the  
17 Board of Directors of the Company since 2011. Borovich also served on the  
18 Company’s Board from 1997-2009.

19 16. Defendant Moshe BenBasset (“BenBasset”) is the founder and Chief  
20 Executive Officer (“CEO”) of ClickSoftware, and has served as a Director since the  
21 Company’s inception.

22 17. Defendant Shae Beilis (“Beilis”) has served as an Independent Director  
23 of the Company’s Board since 2009.

24 18. Defendant Nira Dror (“Dror”) has served as an Independent Director of  
25 the Company’s Board since 2009.

1           19. Defendant Shlomo Nass (“Nass”) has served as an Independent  
2 Director of the Company’s Board since 2009.

3           20. Defendant Menahem Shalgi (“Shalgi”) has served as an Independent  
4 Director of the Company’s Board since 2010.

5           21. Defendant Gil Weiser (“Weiser”) has served as an Independent  
6 Director of the Company’s Board since 2003.

7           22. The defendants referred to in paragraphs 15 through 21 are collectively  
8 referred to herein as the “Individual Defendants” or the “Board”.

9           23. By reason of the above Individual Defendants’ positions with the  
10 Company as officers and/or directors, said individuals are in a fiduciary relationship  
11 with Plaintiff and the other public shareholders of ClickSoftware and owe Plaintiff  
12 and the other members of the Class the highest obligations of good faith, fair dealing,  
13 due care, loyalty, and full and candid disclosure.

14           24. Collectively, ClickSoftware the Individual Defendants, Francisco  
15 Partners, Optimizer and Merger Sub are referred to herein as “Defendants.”

16                                   **CLASS ACTION ALLEGATIONS**

17           25. Plaintiff brings this action individually and as a Class action, pursuant  
18 to Federal Rules of Civil Procedure 23 on behalf of all common shareholders of the  
19 Company (the “Class”). Excluded from the Class are Defendants herein and any  
20 person, firm, trust, corporation or other entity related to or affiliated with any of the  
21 defendants.

22           26. This action is properly maintainable as a class action.

23           27. The Class is so numerous that joinder of all members is impracticable.  
24 As of April 30, 2015, there were approximately 33.33 million shares of  
25 ClickSoftware common stock outstanding, resulting in hundreds, if not thousands of  
26 shareholders.

1           28. There are questions of law and fact which are common to the Class  
2 including, *inter alia*, the following:

3           a. Whether the Proposed Transaction is unfair to the Class;

4           b. Whether Plaintiff and the other members of the Class would be  
5 irreparably damaged were the transactions complained of herein  
6 consummated;

7           c. Whether Defendants have breached their fiduciary and other  
8 common law duties owed by them to Plaintiff and the other members of the  
9 Class;

10          d. Whether Defendants violated Federal laws;

11          e. Whether the Individual Defendants are acting in furtherance of  
12 their own self-interest to the detriment of the Class;

13          f. Whether the Class is entitled to injunctive relief or damages as  
14 a result of the wrongful conduct committed by the Defendants;

15          g. Whether Defendants have disclosed and will disclose all  
16 material facts in connection with the Proposed Transaction; and

17          h. Whether Francisco Partners and/or Optimizer aided and abetted  
18 the Individual Defendants' breaches of fiduciary duty owed to Plaintiff and  
19 the other members of the Class in connection with the Proposed Transaction.

20          29. Plaintiff is committed to prosecuting this action and has retained  
21 competent counsel experienced in litigation of this nature. Plaintiff's claims are  
22 typical of the claims of the other members of the Class and Plaintiff has the same  
23 interests as the other members of the Class. Accordingly, Plaintiff is an adequate  
24 representative of the Class and will fairly and adequately protect the interests of the  
25 Class.

1           30. The prosecution of separate actions by individual members of the Class  
2 would create the risk of inconsistent or varying adjudications with respect to  
3 individual members of the Class which would establish incompatible standards of  
4 conduct for Defendants, or adjudications with respect to individual members of the  
5 Class which would as a practical matter be dispositive of the interests of the other  
6 members not parties to the adjudications or substantially impair or impede their  
7 ability to protect their interests.

8           31. Defendants have acted, or refused to act, on grounds generally  
9 applicable to, and causing injury to the Class and, therefore, preliminary and final  
10 injunctive relief on behalf of the Class as a whole is appropriate.

### 11                           **SUBSTANTIVE ALLEGATIONS**

#### 12           ***ClickSoftware Background***

13           32. ClickSoftware is an Israel-based business solutions company that  
14 develops software to be used to schedule and dispatch field service employees. They  
15 are the biggest, most versatile company in their field, delivering a complete end-to-  
16 end mobile workforce solution to the service industry that is comprised of over 20  
17 years of experience and more than 500 person-years in research and development.

18           33. The Company currently has over fifteen thousand customers worldwide  
19 and is ranked as a “market leader” in Field Service Management according to analyst  
20 firms like Forrester, Gartner, and IDC. Significantly, Gartner has ranked  
21 ClickSoftware as an industry leader for four consecutive years.

22           34. While the Company is headquartered in Israel, it has offices in eight  
23 geographical locations across the globe, operating in the Americas, Latin America,  
24 Europe, and the Asia Pacific Region. Through these offices ClickSoftware employs  
25 over 700 dedicated professionals.

1           35. Since its creation, ClickSoftware has been consistently recognized as a  
2 powerhouse in its field by various bodies, being the recipient of such awards as the  
3 Frost & Sullivan 2015 North American Mobile Workforce Management Product  
4 Line Strategy Leadership Award and the SAP Quality Awards in Europe.

5           36. ClickSoftware's economic success is seen in several areas, including a  
6 recent joint venture with Nextel Telecomunicações Ltda. ("Nextel"), one of the  
7 largest mobile network operators in Brazil. The joint venture is designed to increase  
8 workforce productivity as Nextel adapts to increased demand for 3G services in  
9 Brazil through the utilization of optimizing services and solutions from  
10 ClickSoftware. Speaking on the project, MiRodrigo Rescia, a manager at the  
11 Network Operation Center for Nextel has stated on the joint venture, "It was  
12 important for us to choose a vendor with domain expertise that would work with us  
13 to scale our operations."

14           37. On February 4, 2015 ClickSoftware released its 2014 Q4 and year end  
15 results. Significantly, these results showed that the Company experienced record  
16 financial results.

17           38. Company revenues were \$34.5 million in Q4 of 2014, a 12% year-over-  
18 year increase from the same time last year and a company historical record for Q4  
19 Revenues.

20           39. Additionally, the Company added 22 new customers, of which 15 were  
21 cloud subscriptions. Along that same vein, cloud subscription revenues increased to  
22 \$5.7 million in 2014 Q4 compared to \$0.5 million in 2013 Q4, *an increase of*  
23 *1040%.*

24           40. Speaking on the growth and progress of ClickSoftware, Defendant  
25 BenBasset stated, "I am pleased to report the tremendous progress in our efforts to  
26 grow the Company while we and the market transition into a cloud subscription  
27

1 model.” BenBasset described the company’s 22% revenue growth in the year as a  
2 “remarkable achievement.”

3 41. ClickSoftware’s stellar performance in 2014 also caught the eye of  
4 many financial analysts. Zack’s Equity Research reported on ClickSoftware’s 2014  
5 performance and future potential stating, “In fact, the current growth estimate for  
6 this year calls of significant earnings-per-share growth. Furthermore, the long-term  
7 growth rate is currently an impressive 17.5%, suggesting pretty good prospects for  
8 the long haul.”

9 42. ClickSoftware’s positive performance was not limited to 2014 Q4  
10 results; on May 6, 2015 the Company released its 2015 Q1 earnings report which  
11 showcased further success. Notably the Company reported that cloud subscription  
12 revenues continued to increase, jumping up to \$5.6 million from \$2.3 million at the  
13 same time last year, a 145% increase.

#### 14 ***The Proposed Transaction***

15 43. On April 30, 2015, ClickSoftware issued a press release announcing  
16 that it had agreed to be acquired by Francisco Partners in a going private transaction  
17 valued at approximately \$438 million, or approximately \$12.65 per share in cash.

18 **BURLINGTON, Mass., April 30, 2015 /PRNewswire/ --**  
19 ClickSoftware Technologies Ltd. (NasdaqGS: CKSW) (the  
20 “Company”), the leading provider of automated mobile workforce  
21 management and optimization solutions for the service industry, today  
22 announced that it has signed a definitive agreement to be acquired by  
23 private funds managed by Francisco Partners Management L.P. (“FP”  
24 or “Francisco Partners”), a leading global technology-focused private  
25 equity firm, in an all-cash transaction valued at approximately \$438  
26 million.

25 Under the terms of the agreement, Francisco Partners will acquire all of  
26 ClickSoftware’s outstanding ordinary shares for \$12.65 per share in  
27 cash. This represents a premium of approximately 45% over the

1 average closing price of the Company's shares on the Nasdaq Global  
2 Select Market during the previous 90 calendar days. The Board of  
3 Directors of ClickSoftware unanimously approved the merger  
4 agreement and recommends that ClickSoftware's shareholders approve  
5 the agreement.

6 Dr. Moshe BenBassat, Founder and CEO of ClickSoftware, said, "After  
7 a comprehensive evaluation and review of strategic alternatives  
8 designed to enhance shareholder value, we are confident this agreement  
9 represents a favorable outcome for our shareholders, providing them  
10 with immediate, substantial cash value. Furthermore, we are excited to  
11 partner with Francisco Partners, a firm with an established track record  
12 of working with companies transitioning to Cloud and with companies  
13 in relevant verticals to ClickSoftware. The added flexibility we will  
14 have as a private company, combined with the benefit of FP's  
15 knowledge and domain expertise, will allow us to more effectively  
16 focus on our long-term investment and growth objectives, which will  
17 benefit our employees, customers and partners."

18 "We are excited to support the continued growth of ClickSoftware,"  
19 said Matt Spetzler, Partner at Francisco Partners. "ClickSoftware is a  
20 leader in the mobile workforce management space, and we look  
21 forward to combining our expertise with its talented team of  
22 professionals to further enhance its Cloud solutions, grow its customer  
23 pipeline and further advance its strategic goals."

24 The transaction is subject to certain closing conditions, including  
25 approval of the Company's shareholders. The transaction is not  
26 contingent upon receiving third party financing. ClickSoftware's  
27 shareholders will be asked to vote on the proposed transaction at a  
28 special meeting of shareholders that will be held on a date to be  
announced. ClickSoftware expects the transaction to be completed in  
July 2015. Upon completion, ClickSoftware will become a privately  
held company.

Jefferies LLC is acting as exclusive financial advisor to ClickSoftware.  
Amit, Pollak, Matalon & Co. is acting as legal counsel to  
ClickSoftware, and Sullivan & Worcester LLP is acting as U.S. counsel  
to ClickSoftware.

1 Barclays Capital Inc. is acting as exclusive financial advisor and Meitar  
2 Liquornik Geva Leshem Tal is serving as legal counsel to Francisco  
3 Partners.

4 ***The Inadequate Merger Consideration***

5 44. Analysts' expectations, the Company's dominant advertising market  
6 position, extraordinary growth, and positive future outlook all establish the  
7 inadequacy of the Merger consideration.

8 45. Pursuant to the terms of the Merger Agreement, the Merger values  
9 ClickSoftware at \$12.65 per share. Significantly, financial analysts from both  
10 Oppenheimer and Northland Securities have valued the firm at \$13.00 per share as  
11 recently as one year ago. This valuation is a clear reflection of the Company's strong  
12 position in the industry.

13 46. As discussed *supra*, the Company's excellent growth prospects cannot  
14 be understated. As recommended by Zacks Equity Research as recently as February  
15 13, 2015, "So if you are looking for a fast growing stock that is still seeing plenty of  
16 opportunities on the horizon, make sure to consider CKSW. Not only does it have  
17 double digit earnings growth prospect, but its impressive Zacks Rank suggests that  
18 analysts believe better days are ahead for CKSW as well."

19 47. Accordingly, the Company's true value is compromised by the  
20 consideration offered in the Proposed Transaction and the Merger is the product of  
21 the Board's breaches of fiduciary duty, aided and abetted by Francisco Partners,  
22 Optimizer and Merger Sub.

23 ***The Unfair Sales Process***

24 48. In addition to the inadequate consideration offered to ClickSoftware  
25 shareholders, the entire process deployed by the Individual Defendants and  
26 Francisco Partners (though Optimizer) was also unfair and inadequate.

1           49. In fact, it is no surprise that Francisco Partners was ClickSoftware's  
2 favored bidder as the two companies have a history dating back to 2013, when  
3 Francisco Partners first indicated an interest in acquiring the Company. Although  
4 Francisco Partners never submitted a final bid in the 2013, ClickSoftware and  
5 Francisco Partners made sure that a final deal was agreed to this time.

6           50. The fitful process to sell the Company began on November 2014 when  
7 Francisco Partners again indicated interest in acquiring ClickSoftware and submitted  
8 an offer of \$11.00 per share.

9           51. Subsequently, by the end of 2014, the Company's financial advisor,  
10 Jefferies LLC ("Jefferies") apparently contacted 16 potential bidders. However, the  
11 Proxy is devoid of any information pertaining to how many of these 16 parties  
12 entered into confidentiality agreements and whether these agreements contained  
13 "don't-ask-don't-waive" provisions. The Proxy does note that Francisco Partners  
14 entered into a confidentiality agreement on January 22, 2015.

15           52. On February 4, 2015, there was a "media report" and "rumors" which  
16 prompted 11 additional parties to express interest in a potential acquisition of  
17 ClickSoftware. Out of the 27 potential bidders (16 previously contacted and 11  
18 additional expressed interest), the Company decided to meet with only 12 parties,  
19 including Francisco Partners.

20           53. Between February and March 2015, the Company received five initial  
21 indications of interest, including a proposal from Company B at \$12.00 to \$13.50  
22 per share, a proposal from Company C at \$13.00 to \$15.00 per share, and an  
23 undisclosed proposal from Francisco Partners.

24           54. Suspiciously, the Proxy reports that "following presentation" several  
25 parties, including Company C, decided to not move forward with a potential  
26 acquisition. Notably, the Proxy provides no clarification on when such presentations  
27

1 took place, who made the presentations and what efforts, if any, were made to  
2 negotiate with Company C, which offered the highest deal consideration.

3 55. On April 2, 2015, Francisco Partners submitted a formal non-binding  
4 proposal to acquire the Company for \$13.50 per share. Francisco Partners  
5 subsequently raised its offer to \$13.64 per share. Protecting its favored bidder, the  
6 Company quickly entered into an exclusivity agreement with Francisco Partners  
7 without first asking Company B to raise its offer. Indeed, ClickSoftware never even  
8 informed Company B that it would need to raise its offer, prior to rushing into an  
9 exclusivity agreement with Francisco Partners and foreclosing Company B's  
10 opportunity to submit a superior proposal for the Company.

11 56. Unfortunately for ClickSoftware shareholders, after the Company  
12 entered into the exclusivity agreement, Francisco Partners exercised its bargaining  
13 power and dramatically lowered its offer price to \$12.50 per share. The Board  
14 scrambled to salvage the deal with its favored bidder and convinced Francisco  
15 Partners to raise its offer to \$12.65. Incredibly, the Board again agreed to extend the  
16 exclusivity period with Francisco Partners without first contacting Company B or  
17 any other interested parties.

18 57. The Board's decision to negotiate solely with Francisco Partners was  
19 detrimental. Indeed, on April 28, 2015, Jefferies received an unsolicited non-  
20 binding indication of interest from Company B for **\$13.70 per share**. Company B's  
21 offer was **\$1.05, or 8.3%, higher** than Francisco Partners' offer. However, because  
22 ClickSoftware had entered into an exclusivity agreement with Francisco Partners,  
23 they were unable to respond to Company B's superior offer.

24 58. As such, to the extreme detriment of ClickSoftware's shareholders, the  
25 Board achieved its objective of entering into the Merger with its favored bidder,  
26  
27

1 Francisco Partners, for wholly inadequate consideration; despite the fact that other  
2 parties were ready and willing to pay substantially more for the Company.

3 59. It is no surprise that the Individual Defendants only wanted to enter into  
4 a transaction with Francisco Partners, a private equity firm that expressed no interest  
5 in replacing management or the Board. The Individual Defendants were  
6 predominantly concerned with keeping their jobs and cashing in on lucrative  
7 financial benefits stemming from a transaction with Francisco Partners, rather than  
8 acting in the best interests of ClickSoftware and its shareholders. As such, the  
9 Individual Defendants steered the process away from potential strategic buyers and  
10 towards Francisco Partners. Indeed, the Proxy reveals that there will be no  
11 amendments or changes to any employment agreements after the Merger; meaning  
12 all the Individual Defendants and executives will keep their jobs.

13 60. Additionally, while ClickSoftware public shareholders will be fleeced  
14 of their holdings in the Company, certain Individual Defendants and corporate  
15 insiders, who dominated the sales process, stand to receive a financial windfall they  
16 would not otherwise enjoy if the Company were to remain a standalone entity.  
17 Pursuant to the Merger Agreement, the Company's stock options and restricted  
18 shares will no longer be subject to their restrictions and will become fully  
19 redeemable upon consummation of the Proposed Transaction. Each of the  
20 Individual Defendants have substantial holdings in the Company, in the form of  
21 options and restricted shares. For example, Defendant BenBassat will alone receive  
22 over \$21.7 million in immediate liquidity upon the close of the Merger. As such,  
23 the Proposed Transaction will certainly provide the substantial benefit of allowing  
24 the Individual Defendants and other corporate insiders to liquidate their otherwise  
25 illiquid holdings – a benefit not available to the Class. Therefore, the Individual  
26  
27

1 Defendants were incentivized to drive a sales process that primarily served their own  
2 interests and was detrimental to ClickSoftware and its shareholders.

3 ***The Preclusive Deal Protection Mechanisms***

4 61. To further protect its deal with Francisco Partners, the Individual  
5 Defendants agreed to certain onerous and preclusive deal protection devices that  
6 operate conjunctively to make the Proposed Transaction a *fait accompli* and ensure  
7 that no competing offers will emerge for the Company.

8 62. For example, the Merger Agreement contains a termination fee  
9 provision that requires ClickSoftware to pay up to \$21.93 million (*a staggering 5%*  
10 of the of the Company's equity value) in fees and expenses to Optimizer (and  
11 ultimately Francisco Partners) if the Company decides to pursue another offer,  
12 thereby essentially requiring that any alternate bidder agree to pay a naked premium  
13 for the right to provide the shareholders with a superior offer.

14 63. The Agreement also contains a "No Solicitation" provision which bars  
15 the Board and any Company representatives from attempting to procure a price in  
16 excess of the amount offered by Francisco Partners. It further demands that the  
17 Company terminate any and all prior or on-going discussions with other potential  
18 suitors.

19 64. Additionally, the Merger Agreement provides that if the Company so  
20 much as receives an inquiry from an unsolicited bidder that may lead to a superior  
21 proposal, it must notify Francisco Partners within twenty-four (24) hours of the  
22 identity of the bidder and the material terms of the proposal, prior to taking action  
23 pursuant to the competing proposal. Additionally, the terms of the Merger  
24 Agreement constrain ClickSoftware by limiting the amount of time they can discuss  
25 a superior proposals to 18 days. Thus, a rival bidder is not likely to emerge with the  
26 cards stacked so much in favor of Francisco Partners.

1           65. Further, pursuant to the Merger Agreement, the Board must also give  
2 Francisco Partners five (5) business days after the delivery of the prompt notice  
3 during which it must negotiate with Francisco Partners (should Francisco Partners  
4 desire to negotiate) so that Francisco Partners has the opportunity to adjust the terms  
5 and conditions of the Merger Agreement so that the competing proposal ceases to  
6 be a superior proposal. Accordingly, the Merger Agreement unfairly assures that  
7 any “auction” will favor Francisco Partners and piggy-back upon the due diligence  
8 of the foreclosed alternative bidder.

9           66. Moreover, concurrently with the execution of the Merger Agreement,  
10 Francisco Partners entered into a voting agreement with Defendant BenBassat and  
11 Idit BenBassat (collectively the “BenBassat Group”) which guarantees that 9.6% of  
12 ClickSoftware’s shares will be voted in favor of the Merger. Indeed, upon the close  
13 of the Merger, the BenBassat group stands to receive over \$40.61 million in  
14 immediate liquidity.

15           67. Ultimately, these preclusive deal protection devices and agreements  
16 restrain the Company’s ability to solicit or engage in negotiations with any third  
17 party regarding a proposal to acquire all or a significant interest in the Company.  
18 The circumstances under which the Board may respond to an unsolicited alternative  
19 acquisition proposal that constitutes, or would reasonably be expected to constitute,  
20 a superior proposal are too narrowly circumscribed to provide an effective “fiduciary  
21 out” under the circumstances.

22           68. Accordingly, Plaintiff seeks injunctive and other equitable relief to  
23 prevent the irreparable injury that Company shareholders will continue to suffer  
24 absent judicial intervention.

1 ***The Materially Misleading and Incomplete Proxy***

2 69. On May 7, 2015, ClickSoftware filed its Proxy, which fails to disclose  
3 material information necessary for reasonable shareholders to make an informed  
4 vote on whether to approve the Merger.

5 **i. Material Omissions and Misrepresentations Concerning the**  
6 **Background of the Proposed Transaction**

7 70. The Proxy omits many important details concerning the process that led  
8 up to the signing of the Merger Agreement.

9 71. Specifically, the Proxy fails to disclose the nature and extent of any  
10 prior relationship between ClickSoftware and Francisco Partners, and/or any of their  
11 respective directors or officer. Additionally, the Proxy fails to disclose why  
12 Francisco Partners did not submit a final bid for the Company when it first expressed  
13 interest in acquiring ClickSoftware in 2013. This information is material to  
14 shareholders because it explains why the Board favored Francisco Partners to the  
15 exclusion of all other bidders.

16 72. The Proxy fails to disclose the vetting process that led to the selection  
17 of Jefferies as the Company's financial advisor and whether any other banks were  
18 considered. This information is material to shareholders because without this  
19 information the Company's public shareholders cannot evince the rationale for the  
20 Board's selection of Jefferies and whether the Board performed a conflict check to  
21 ensure that Jefferies was capable of rendering independent advice to the Board.

22 73. On page 22, the Proxy states that on November 27, 2014 Francisco  
23 Partners submitted an offer to purchase the Company for \$11.00 per share.  
24 However, the Proxy fails to disclose: (i) how the Company responded to this  
25 proposal; (ii) whether there were any meeting between ClickSoftware and Francisco  
26 Partners prior to this offer, especially since they had previously expressed interest in  
27

1 acquiring the Company; and (iii) whether the Board was advised about this proposal;  
2 and (iv) to what extent, if any, the Board participate or directed negotiations with  
3 Francisco Partners or any other parties. This information is material to shareholders  
4 because it shows the nature of the relationship between ClickSoftware and Francisco  
5 Partners. This information is also material because it shows the extent to which the  
6 Board was involved in the sales process, or whether the Board simply allowed  
7 Defendant BenBassat and CFO Joel Jeselsohn to exclusively control the process.

8         74. Also on page 22, the Proxy states that Jefferies contacted 16 potential  
9 bidders and that management requested that the bidders enter into confidentiality  
10 agreements; however, the Proxy fails to disclose how many of the 16 parties entered  
11 into such confidentiality agreements and whether those agreements contained  
12 “don’t-ask-don’t-waive” provisions. This information is material to shareholders  
13 because it allows them to determine whether there are other potentially interested  
14 bidders who are contractually precluded from making superior offers to acquire the  
15 Company.

16         75. The Proxy states that on February 4, 2015, there was a “media report”  
17 and “rumors” which prompted 11 additional parties to express interest in a potential  
18 acquisition of ClickSoftware. However, the Proxy fails to disclose the source and  
19 content of such reports and rumors and the reason why these 11 additional parties  
20 were not originally contacted or identified by Jefferies. This information is material  
21 to shareholders because it shows the extent of the sales process undertaken by  
22 Jefferies and the Board.

23         76. Additionally, the Proxy states that Jefferies responded to this interest  
24 by qualifying the parties to participate in the process. However, the Proxy fails to  
25 disclose: (i) what it means for Jefferies to “qualify” interested parties; and (ii) how  
26 Jefferies went about “qualifying” interested parties, including any standards and  
27

1 procedures Jefferies applied in making such determinations. Such information is  
2 material to shareholders because without it the information presented is unclear and  
3 vague.

4 77. On Page 22, the Proxy states that between February and March 2015,  
5 the Company received an indication of interest from Francisco Partners; however,  
6 the Proxy fails to disclose what that offer was.

7 78. Additionally, the Proxy states that Company C submitted a proposal for  
8 \$13.00 to \$15.00 but then decided not to move forward with the process after  
9 presentations were made. To that extent, the Proxy fails to disclose: (i) when such  
10 presentations took place; (ii) whether it was the Board, management or Jefferies that  
11 made the presentations; and (iii) what efforts if any were made to negotiate with  
12 Company C, which was the superior bidder throughout the entire sales process. This  
13 information is material to shareholders because Company C offered the highest  
14 consideration and it is necessary to understand whether the Board made any effort  
15 to negotiation with them and the reason why a transaction with Company C could  
16 not be achieved.

17 79. The Proxy further states that ClickSoftware entered into an exclusivity  
18 agreement with Francisco Partners. However, the Proxy fails to disclose why the  
19 Company entered into this agreement without first asking Company B to raise its  
20 offer. This information is material to shareholders because Company B did, in fact,  
21 raise its offer but due to the exclusivity agreement, ClickSoftware was unable to  
22 respond to Company B's superior proposal. Such material information needs to be  
23 disclosed to shareholders so they can assess whether the Proposed Transaction is a  
24 value maximizing transaction in which they are getting fair consideration for their  
25 shares.

1        80. Each of the above referenced omissions are material because they  
2 directly relate to the process the Board took to maximize shareholder value and  
3 whether the Board inappropriately steered the process toward a deal with Francisco  
4 Partners to the detriment of the Company's shareholders.

5        **ii. Materially Incomplete and Misleading Disclosures Concerning**  
6        **Jefferies' Financial Analyses**

7        81. In addition to the above, the Proxy also omits several important details  
8 concerning the financial analysis undertaken by Jefferies in support of its fairness  
9 opinion.

10        82. Strikingly, the Proxy fails to disclose *any and all* management financial  
11 projections which were given to and relied upon by Jefferies in preparation of its  
12 financial analyses and fairness opinion. Included in these undisclosed management  
13 financial projections are free cash flows figures, which Jefferies specifically  
14 referenced as critical figures the bank used in its discounted cash flow analysis on  
15 page 33. It is well-settled that management's financial projections are crucial to  
16 providing shareholders with management's inside view of the Company's value and  
17 future prospects. This data is necessary when asking shareholders to make an  
18 informed decision about whether to vote in favor of the Proposed Transaction and,  
19 thus, must be disclosed.

20        83. Additionally, with respect to the *Selected Companies Analysis*,  
21 referenced on pages 30 to 31, the Proxy fails to disclose: (i) the criteria for selecting  
22 the comparable companies used in the analysis; and (ii) the multiples observed for  
23 each of the companies in the analysis, or at least a complete high/low/mean/median  
24 range. This information is material and necessary because absent disclosure of the  
25 information, shareholders have no way to gauge the weight of the representative  
26 ranges used in the analysis.

84. With respect to the *Selected Transactions Analysis*, referenced on page 32, the Proxy fails to disclose: (i) the basis for selecting the companies and transactions used in the analysis; (ii) the multiples observed for each of the selected transactions, or at least a complete high/low/mean/median range; (iii) whether any other metrics were considered, especially since Jefferies stated that the LTM TEV/EBITDA measure “did not yield a meaningful range”; and (iv) whether Jefferies had any concerns that this analysis, which yields an implied value range of \$10.40 to \$15.49, shows that the \$12.65 Merger consideration undervalues the Company. This information is material and necessary for ClickSoftware shareholders to have a fair summary of the financial analysis performed by Jefferies.

85. With respect to the *Discounted Cash Flow Analysis*, referenced on page 33, the Proxy fails to disclose: (i) the definition of “free cash flows” used in the analysis; (ii) the management financial projections that were provided to and relied upon by Jefferies in this analysis; (iii) the judgments and key inputs considered by Jefferies in selecting the discount rate range of 10.75% to 12.75%, including how weighted average cost of capital was calculated in the analysis; (iv) the judgments and key inputs considered by Jefferies in selecting the perpetuity growth rate range of 2.00% to 4.00%; and (v) whether Jefferies had any concerns that this analysis, which yields an implied value range of \$12.47 to \$18.60, shows that the \$12.65 Merger consideration undervalues the Company.

86. Additionally, on page 33, the Proxy states that within the last two years, Jefferies had performed various financial services for companies affiliated with Francisco Partners and has acted as a financial advisor to a portfolio company of a fund managed by Francisco Partners in connection with a merger transaction, for which they received compensation. However, the Proxy fails to disclose the extent of such services and the amount of such compensation. This information is material

1 to shareholders because it shows the extent, if any, of Jefferies' conflict of interest  
 2 in acting as a financial advisor to ClickSoftware in connection with this Merger.

3 87. Absent the material information set forth above, ClickSoftware  
 4 shareholders do not have sufficient information to make a fully-informed vote for or  
 5 against the Merger. Accordingly, Plaintiff request injunctive relief to remedy this  
 6 irreparable harm.

### 7 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

8 88. By reason of the Individual Defendants' positions with the Company as  
 9 officers and/or directors, said individuals are in a fiduciary relationship with  
 10 ClickSoftware and owe the Company the duties of due care, loyalty, and good faith.

11 89. By virtue of their positions as directors and/or officers of  
 12 ClickSoftware, the Individual Defendants, at all relevant times, had the power to  
 13 control and influence, and did control and influence and cause ClickSoftware to  
 14 engage in the practices complained of herein.

15 90. Under the Companies Law, each of the Individual Defendants are  
 16 required to act with due care, loyalty, good faith and in the best interests of the  
 17 Company. To diligently comply with these duties, directors of a corporation must:

18 a. act with the requisite diligence and due care that is reasonable  
 19 under the circumstances;

20 b. act in the best interest of the company;

21 c. use reasonable means to obtain material information relating to a  
 22 given action or decision;

23 d. refrain from acts involving conflicts of interest between the  
 24 fulfillment of their roles in the company and the fulfillment of any other roles  
 25 or their personal affairs;

1 e. avoid competing against the company or exploiting any business  
2 opportunities of the company for their own benefit, or the benefit of others;  
3 and

4 f. disclose to the Company all information and documents relating  
5 to the company's affairs that they received by virtue of their positions in the  
6 company.

7 91. In accordance with their duties of loyalty and good faith, the Individual  
8 Defendants, as directors and/or officers of ClickSoftware, are obligated to refrain  
9 from:

10 a. participating in any transaction where the directors' or officers'  
11 loyalties are divided;

12 b. participating in any transaction where the directors or officers are  
13 entitled to receive personal financial benefit not equally shared by the  
14 Company or its public shareholders; and/or

15 c. unjustly enriching themselves at the expense or to the detriment  
16 of the Company or its shareholders.

17 92. Plaintiff alleges herein that the Individual Defendants, separately and  
18 together, in connection with the Proposed Transaction, violated, and are violating,  
19 the fiduciary duties they owe to ClickSoftware, Plaintiff and the other public  
20 shareholders of ClickSoftware, including their duties of loyalty, good faith, and due  
21 care.

22 93. As a result of the Individual Defendants' divided loyalties, Plaintiff and  
23 Class members will not receive adequate, fair or maximum value for their  
24 ClickSoftware common stock in the Proposed Transaction.

**DERIVATIVE AND DEMAND FUTILITY**

94. Plaintiff also brings this action derivatively pursuant to Federal Rule of Civil Procedure 23.1 in the right and for the benefit of ClickSoftware to redress injuries suffered and to be suffered by ClickSoftware as a direct result of the breaches of fiduciary duty and other violations of law by the Individual Defendants. ClickSoftware is named as a nominal defendant solely in a derivative capacity.

95. Plaintiff owns and has owned ClickSoftware common stock at all times relevant hereto.

96. Plaintiff will adequately and fairly represent the interests of the Company and its shareholders in enforcing and prosecuting his rights.

97. Plaintiff is and at all relevant times has been a continuous shareholder of ClickSoftware common stock.

98. This action is not being used by Plaintiff to gain any personal advantage, nor does Plaintiff maintain any personal agenda other than seeking to correct the wrongs that have been done to the Company. To this end, Plaintiff has taken steps to file this action and has retained counsel experienced in derivative litigation and corporate governance actions.

99. ClickSoftware's Board members have directly participated in the wrongs complained of herein, which disables them from acting independently, objectively and in good faith to advance the interests of ClickSoftware or respond impartially to a demand by shareholders. Consequently, Plaintiff's demand upon the Company to take action requested herein is excused as futile. ClickSoftware's Board and its management are also antagonistic to this lawsuit as follows, and thus, Plaintiff has not made a pre-filing demand on the Board to initiate this action:

a. The members of the Board have demonstrated their unwillingness and/or inability to act in compliance with their fiduciary

1 obligations and/or to sue themselves and/or their fellow directors and allies in  
2 the top ranks of the Company for the violations of law complained of herein.  
3 These are people that they have developed professional relationships with,  
4 who are their friends, and with whom they have entangling alliances, interests,  
5 and dependencies. Therefore, the Board members are not able to, and will  
6 not, vigorously prosecute any such action.

7 b. The members of the Board have benefited, and will continue to  
8 benefit, from the wrongdoing alleged herein and are incapable of exercising  
9 independent objective judgment in deciding whether to bring this action.

10 c. In order to properly prosecute this lawsuit, it would be necessary  
11 for the directors to sue themselves – something they are unwilling to do. Such  
12 a suit would require the directors to expose themselves to millions of dollars  
13 in liability to the Company and its shareholders.

14 100. Demand is also excused because the Company would be irreparably  
15 harmed if the shareholder vote on the Proposed Transaction, scheduled for June 11,  
16 2015, was permitted to proceed without first affording the relief requested herein.  
17 Under applicable California corporate law, demand is excused where, as here, a  
18 demand, or a delay in awaiting a response to a demand, would cause irreparable  
19 harm to the corporation.

## 20 **FEDERAL LAWS**

21 101. Section 14(a) of the Exchange Act makes it unlawful to solicit a proxy  
22 “in contravention of such rules and regulations as the [SEC] may prescribe as  
23 necessary or appropriate in the public interest.” 15 U.S.C. §78n(a).

24 102. Rule 14a-9, which the SEC promulgated under §14(a), provides that no  
25 proxy statement shall contain “any statement which, at the time and in the light of  
26 the circumstances under which it is made, is false or misleading with respect to any  
27

1 material fact, or which omits to state any material fact necessary in order to make  
2 the statements therein not false or misleading . . . .” 17 C.F.R. §240.14a-9(a).

3 103. ClickSoftware and the Individual Defendants have violated Section  
4 14(a) of the Exchange Act by disseminating a false misleading and incomplete  
5 Proxy.

## 7 **FIRST CAUSE OF ACTION**

### 8 **Claim for Breach of Fiduciary Duties against Individual Defendants**

9 104. Plaintiff repeats and re-alleges each allegation set forth herein.

10 105. The Individual Defendants have violated their fiduciary duties of care,  
11 loyalty and good faith owed to Plaintiffs and the Company’s public shareholders.

12 106. By the acts, transactions and courses of conduct alleged herein,  
13 Defendants, individually and acting as a part of a common plan, are attempting to  
14 unfairly deprive Plaintiff and other members of the Class of the true value of their  
15 investment in ClickSoftware.

16 107. As demonstrated by the allegations above, the Individual Defendants  
17 failed to exercise the care required, and breached their duties of loyalty and good  
18 faith owed to the shareholders of ClickSoftware by entering into the Proposed  
19 Transaction through a flawed and unfair process and failing to take steps to  
20 maximize the value of ClickSoftware to its public shareholders.

21 108. Indeed, Defendants have accepted an offer to sell ClickSoftware at a  
22 price that fails to reflect the true value of the Company, thus depriving shareholders  
23 of the reasonable, fair and adequate value of their shares. The Proposed Transaction  
24 was not the result of a competitive bidding process or arms’-length negotiation  
25 where all possible synergistic acquirers were vetted.

1           109. Moreover, the Individual Defendants breached their duty of due care  
2 and candor by failing to disclose to Plaintiff and the Class all material information  
3 necessary for them to make an informed vote on whether to approve the Merger.

4           110. The Individual Defendants dominate and control the business and  
5 corporate affairs of ClickSoftware, and are in possession of private corporate  
6 information concerning ClickSoftware's assets, business and future prospects.  
7 Thus, there exists an imbalance and disparity of knowledge and economic power  
8 between them and the public shareholders of ClickSoftware which makes it  
9 inherently unfair for them to benefit their own interests to the exclusion of  
10 maximizing shareholder value.

11           111. By reason of the foregoing acts, practices and course of conduct, the  
12 Individual Defendants have failed to exercise due care and diligence in the exercise  
13 of their fiduciary obligations toward Plaintiff and the other members of the Class.

14           112. As a result of the actions of the Individual Defendants, Plaintiff and the  
15 Class will suffer irreparable injury in that they have not and will not receive their  
16 fair portion of the value of ClickSoftware's assets and businesses and have been and  
17 will be prevented from obtaining a fair price for their common stock.

18           113. Unless the Individual Defendants are enjoined by the Court, they will  
19 continue to breach their fiduciary duties owed to Plaintiff and the members of the  
20 Class, all to the irreparable harm of the Class.

21           114. Plaintiff and the members of the Class have no adequate remedy at law.  
22 Only through the exercise of this Court's equitable powers can Plaintiff and the Class  
23 be fully protected from the immediate and irreparable injury which Defendants'  
24 actions threaten to inflict.

1 **SECOND CAUSE OF ACTION**

2 **On Behalf of Plaintiff and the Class Against Francisco Partners, Optimizer**  
3 **and Merger Sub for Aiding and Abetting the Individual Defendants' Breach**  
4 **of Fiduciary Duty**

5 115. Plaintiff repeats and re-alleges each allegation set forth herein.

6 116. Defendants Francisco Partners, Optimizer and Merger Sub (collectively  
7 "Entities") have acted and are acting with knowledge of, or with reckless disregard  
8 to, the fact that the Individual Defendants are in breach of their fiduciary duties to  
9 ClickSoftware and its public shareholders, and have participated in such breaches of  
10 fiduciary duties.

11 117. The Entities knowingly aided and abetted the Individual Defendants'  
12 wrongdoing alleged herein. In so doing, the Entities rendered substantial assistance  
13 in order to effectuate the Individual Defendants' plan to consummate the Proposed  
14 Transaction in breach of their fiduciary duties.

15 118. The Entities have participated in the breach of the fiduciary duties by  
16 the Individual Defendants for the purpose of advancing their own interests. The  
17 Entities obtained and will obtain both direct and indirect benefits from colluding in  
18 or aiding and abetting the Individual Defendants' breaches. In connection with  
19 discussions regarding the Proposed Transaction, the Entities obtained sensitive, non-  
20 public information concerning ClickSoftware operations and thus had the advantage  
21 to acquire the Company at an unfair price. The Entities will benefit from the  
22 acquisition of the Company at an inadequate and unfair price if the Proposed  
23 Transaction is consummated.

24 119. As a result of this conduct by the Entities, Plaintiff and the other  
25 members of the Class have and will be damaged by being denied the opportunity to  
26 increase the value of their investments in ClickSoftware.

1           120. Plaintiff and the members of the Class have no adequate remedy at law.  
2 Only through the exercise of this Court's equitable powers can Plaintiff and the Class  
3 be fully protected from the immediate and irreparable injury which Defendants'  
4 actions threaten to inflict.

### 5                                   **THIRD CAUSE OF ACTION**

#### 6                   **Derivative Claim For Breach of Fiduciary Duty Against the Individual** 7                                   **Defendants**

8           121. Plaintiff repeats and re-alleges each and every allegation above as if set  
9 forth in full herein.

10          122. As directors of ClickSoftware, the Individual Defendants stand in a  
11 fiduciary relationship to the Company and are obligated to conduct the business of  
12 the Company with care, loyalty and in good faith. This cause of action is asserted  
13 based upon the Individual Defendants' acts in violation of the Companies Law,  
14 which acts constitute a breach of fiduciary duty and waste of the Company's  
15 corporate assets.

16          123. The Individual Defendants have violated the fiduciary duties of care,  
17 loyalty, and good faith owed to ClickSoftware and have acted to put their personal  
18 interests and the interests of Francisco Partners ahead of the interests of  
19 ClickSoftware.

20          124. The Individual Defendants have violated their fiduciary duties by  
21 agreeing to the Proposed Transaction without regard to the fairness of the Proposed  
22 Transaction to ClickSoftware. By the acts, transactions and courses of conduct  
23 alleged herein, the Individual Defendants, individually and acting as part of a  
24 common plan, usurped ClickSoftware's assets for themselves.

1        125. As demonstrated by the allegations above, the Individual Defendants  
2 knowingly or recklessly failed to exercise the care required, and breached their  
3 duties of loyalty and good faith owed to ClickSoftware.

4        126. As a direct and proximate result of the Individual Defendants' conduct,  
5 ClickSoftware will suffer irreparable harm if the Proposed Transaction proceeds.

6  
7                                    **FOURTH CAUSE OF ACTION**

8                                    **Violations of Rule 14(a) Promulgated Under The Securities Exchange**  
9                                    **Act Of 1934**

10        127. Plaintiff repeats and re-alleges each and every allegation above as if set  
11 forth in full herein.

12        128. Defendants disseminated the false and misleading Proxy specified  
13 above which failed to disclose material facts necessary in order to make the  
14 statements made, in light of the circumstances under which they were made, not  
15 misleading or incomplete.

16        129. The Proxy violates Rule 14a because it omits material facts necessary  
17 to make the statements made not misleading, as set forth in ¶¶ 69-86, *supra*. If  
18 Plaintiff and the other members of the Class were in possession of the facts that have  
19 been concealed and omitted by Defendants, Plaintiff and other members of the Class  
20 would be materially less likely to vote their shares in favor of the Proposed  
21 Acquisition.

22        130. In the exercise of reasonable care, Defendants knew or should have  
23 known that the Proxy was materially false and/or misleading and would be relied  
24 upon by ClickSoftware shareholders in determining how to vote their shares in the  
25 upcoming vote on the Merger Agreement.

**FIFTH CAUSE OF ACTION**

**Violations of Section 20(a) of the Exchange Act**

131. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

132. The Individual Defendants acted as controlling persons of ClickSoftware within the meaning of §20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of ClickSoftware, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false and misleading statements contained in the Proxy filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

133. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and the statements alleged by Plaintiff to be false and misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

134. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercised the same. The Definitive Proxy contains the unanimous recommendation of each of the

1 Individual Defendants to approve the Merger. The Individual Defendants were,  
2 therefore, directly involved in the creation of the Proxy.

3 135. In addition, as the Proxy sets forth at length, and as described herein,  
4 the Individual Defendants were each involved in negotiating, reviewing, and  
5 approving the Merger. The Proxy purports to describe the various issues and  
6 information that the Individual Defendants reviewed and considered. The Individual  
7 Defendants participated in drafting and/or gave their input on the content of those  
8 descriptions.

9 136. By virtue of the foregoing, the Individual Defendants violated §20(a)  
10 of the Exchange Act.

11 137. As set forth above, the Individual Defendants had the ability to exercise  
12 control over and did control a person or persons who have each violated §14(a) and  
13 SEC Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their  
14 positions as controlling persons, these defendants are liable pursuant to §20(a) of the  
15 Exchange Act. As a direct and proximate result of Individual Defendants' conduct,  
16 Plaintiff and the Class were injured thereby.

17  
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment as follows:

20 A. Declaring this action to be a proper Class action and certifying Plaintiff  
21 as Class representative and Plaintiff's counsel as Class Counsel;

22 B. Declaring demand was made or is futile and the Plaintiff can pursue  
23 derivative claims against the Individual Defendants;

24 C. Declaring and decreeing that the Merger Agreement was agreed to in  
25 breach of the fiduciary duties of the Individual Defendants and is therefore unlawful  
26 and unenforceable;

1 D. Declaring the Proxy violates Federal Laws.

2 E. Enjoining Defendants, their agents, counsel, employees, and all persons  
3 acting in concert with them from consummating the Proposed Transaction, unless  
4 and until the Company issues all material information and adopts and implements a  
5 procedure or process to obtain a merger agreement providing the best possible terms  
6 for shareholders;

7 F. Rescinding, to the extent already implemented, the Proposed  
8 Transaction or any of the terms thereof, or granting Plaintiff and the Class rescissory  
9 damages;

10 G. Directing the Individual Defendants to exercise their fiduciary duties to  
11 commence a sale process that is reasonably designed to secure the best possible  
12 consideration for ClickSoftware and obtain a transaction which is in the best interests  
13 of ClickSoftware and its shareholders;

14 H. Imposition of a constructive trust, in favor of Plaintiff and members of  
15 the Class, upon any benefits improperly received by Defendants as a result of their  
16 wrongful conduct;

17 I. Directing the Individual Defendants to account to Plaintiff and the  
18 Class for all damages suffered as a result of the Individual Defendants' wrongdoing;

19 J. Awarding reasonable fees, expenses and costs to Plaintiff and  
20 Plaintiff's counsel; and

21 K. Granting such other and further relief as the Court deems just and  
22 proper.

23 //

24 //

25 //

26 //

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: June 3, 2015

BRODSKY & SMITH, LLC

By: /s/ Evan J. Smith

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